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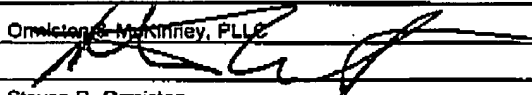
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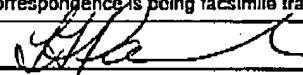
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<b>TRANSMITTAL FORM</b>  <i>(to be used for all correspondence after initial filing)</i>		Application Number	09/779135
		Filing Date	Feb 6, 2001
		First Named Inventor	James F. Fordemwalt
		Art Unit	2193
		Examiner Name	Insun Kang
Total Number of Pages In This Submission	12	Attorney Docket Number	10002364-1

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <b>Resubmission of Appellants'/Applicants' Opening Brief On Appeal (Amended) in response to the Notice of Non-Compliant Appeal Brief mailed Jan. 26, 2006</b>
Remarks _____		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Ormiston & McKinney, PLLC		
Signature			
Printed name	Steven R. Ormiston		
Date	February 22, 2006	Reg. No.	35974

CERTIFICATE OF TRANSMISSION/MAILING			
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**Inventor(s): J. Fordemwalt et al.**

**Serial No: 09/779,135**

**Filed: February 6, 2001**

**Title: System For Installing Peripheral Software During Peripheral Installation**

**Attorney**

**Docket Number:** 10002364-1

Group Art Unit: 2193

**Examiner: Insun Kang**

**APPELLANTS'/APPLICANTS' OPENING BRIEF ON APPEAL (AMENDED)**

This amended appeal brief is submitted to correct what the Office has identified in the Notification of Non-Compliant Appeal Brief as errors in the original brief.

**1. REAL PARTY IN INTEREST.**

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holding, LLC.

## 2. RELATED APPEALS AND INTERFERENCES.

There are no other appeals or interferences known to Appellants, Appellants' legal representative or the Assignee which will affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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**RECEIVED**  
**CENTRAL FAX CENTER****FEB 22 2006****3. STATUS OF CLAIMS.**

Claims 1-12 and 14-21 are pending. The rejection of all pending claims is appealed.

**4. STATUS OF AMENDMENTS.**

No amendments were submitted after the final action.

**5. SUMMARY OF CLAIMED SUBJECT MATTER.**

The claims address, in various forms, installing a peripheral device driver and associated peripheral software on a client computer over a network.

In the method of Claim 1, for example, the device driver is invoked and the associated software is installed in response to an initialization of the driver on the client computer (Fig. 4, steps 402 - 410 and Specification page 8, line 22 through page 9, line 12). Installation of the device driver on the client computer is then completed (Fig. 4, step 412 and Specification page 9, lines 12-14).

In the method of Claim 8, for another example, a description file associated with the peripheral is read in response to initialization of the driver during installation on the client computer (Fig. 4, steps 402-406 and Specification page 7, lines 21-24 and page 9, lines 3-9). The peripheral software is installed on the client computer in response to an installation procedure included in the description file (Fig. 4, steps 408-410 and Specification page 9, lines 6-12). Installation of the driver on the client computer is then completed (Fig. 4, step 412 and Specification page 9, lines 12-14).

Claim 14 is a system counterpart to method of Claim 8 and recites similar limitations. The system of Claim 14 includes a processor of a client computer (Fig. 2, part number 202); a memory coupled to the processor (Fig. 2, part number 206 or 208); and a peripheral with a driver and associated software installed on a remote computer (Fig. 1, part number 112a). The driver and the associated software are retrieved from a remote computer and stored in memory on the client computer (Specification page 7, line 29 through page 8, line 6). The processor on the client computer is configured to read a description file identifying an installation method for the associated peripheral software in response to initialization of the driver during installation on the client

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computer (Fig. 4, steps 402-406 and Specification page 7, lines 21-24 and page 9, lines 3-9). The associated peripheral software is installed according to the installation method identified in the description file (Fig. 4, steps 408-410 and Specification page 9, lines 6-12). Installation of the driver on the client computer is then completed (Fig. 4, step 412 and Specification page 9, lines 12-14).

Claim 21 is a computer medium counterpart to the method of Claim 8 and recites similar limitations. The computer readable medium of Claim 21 includes programming for installing a driver and other software for a peripheral administered by a host computer on a client computer remote from the host computer. The programming includes a driver (Fig. 3, part number 310), software designed to accompany the driver (Fig. 3, part number 330), and an installation description file configured to identify the software and the installation method for the software (Fig. 3, part number 320). The driver is configured to read the installation description file and invoke the installation of the software according to the installation method (Specification page 8, lines 13-15).

#### **6. GROUNDS FOR REJECTION TO BE REVIEWED.**

Claims 1-5, 7-11, 14-18 and 20 were rejected under Section 103 as being obvious over Henry (6681392). Claims 6, 12 and 19 were rejected under Section 103 as being obvious over Henry in view of Admitted Prior Art. Appellants seek review of the following grounds for rejection.

A. Installing peripheral software in response to initialization of the driver is not an obvious modification of Henry (Claims 1-12 and 14-21).

B. Henry does not teach or suggest the sequence of invoking the driver, installing the associated software, and then completing installation of the driver (Claims 1-7).

C. Henry does not teach or suggest the sequence of reading a description file during installation of a device driver, installing the associated software in response to an installation procedure in the description file and then completing installation of the driver (Claims 8-12 and 14-21).

D. Henry does not teach or suggest modifying the driver to read the description file (Claims 4 and 10).

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**7. ARGUMENT.****A. Ground For Rejection A (Claims 1-12 and 14-21) -- Installing peripheral software in response to initialization of the driver is not an obvious modification of Henry.**

Independent method Claim 1 recites installing peripheral software in response to initialization of the device driver on the client computer and then completing installation of the device driver. Independent method Claim 8 recites reading a description file during installation of a device driver, installing the associated software in response to an installation procedure in the description file, and then completing installation of the driver. Independent system Claim 14 and computer medium Claim 21 recite similar limitations.

Henry discloses a software system running on a server computer that can install device drivers and other software on a remote client computer. The install engine determines which software to install by direct user input or by executing a script file. Henry, column 6, lines 29-34. Even if it is assumed that the utilities mentioned in Henry are the claimed peripheral software, as asserted by the Examiner, Henry still does not say anything about installing a utility in response to initializing the device driver. Nevertheless, the Examiner argues that because Henry's script file "can be" used to install a utility in response to initialization of the driver, it would be obvious to modify Henry to perform the claimed installation "in order to insure installation of the driver and its associated utilities." Office Action, page 3.<sup>1</sup>

The Examiner's argument is insufficient to sustain the rejection in two respects. First, there is no teaching or suggestion in Henry that his script file could be used to install a utility in response to initializing the device driver. The Examiner's finding in this regard is speculative. Henry teaches only that his script file includes a list of software and instructions to automatically install the software. Henry, column 4, lines 61-65 and column 6, lines 29-34.

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<sup>1</sup> The Examiner still does not address Claim 1 anywhere in the final Office Action even though Applicants pointed out the same omission in response to the earlier Action. The remarks on pages 2-4 of the final Office Action are directed to Claim 8. Nevertheless, Applicants will continue to assume the Examiner intended similar remarks for Claim 1.

Second, even if it is assumed that Henry's script file could be used to install a utility in response to initializing the driver, there is no suggestion in Henry that his script file should be used to install a utility in response to initializing the driver. The motivation to modify Henry proffered by the Examiner – "in order to insure installation of the driver and its associated utilities" – is a generalized benefit that motivates the use of any method for installing any combination of software, including the script file listing and user intervention methods taught by Henry. As such, someone reading Henry might be motivated to follow the teachings of Henry to obtain this general benefit, but that hardly means someone would be motivated to modify Henry in the specific manner recited in Claim 1 or Claim 8 to obtain this benefit. If the Examiner's position is accepted, then Henry would render obvious any and all methods for installing a driver and associated software.

Finally, the Examiner seems to suggest that the "response" limitation in Claims 1 and 8 is met in Henry by signaling the driver that the installation is a remote installation and that any initialization requiring user intervention must be suppressed. Office Action, page 3, citing Henry, column 5, lines 44-58. Applicants fail to see the relevance of this passage in Henry to the claim limitations. Nothing in this passage of Henry (or anything else in Henry) suggests reading the script file in response to initialization of the driver. The fact that Henry's installation software might signal the driver to suppress processes requiring user intervention says nothing about reading the script file in response to driver initialization.

For all of these reasons, Applicants respectfully submit that the Examiner has failed to show that installing peripheral software in response to initialization of a device driver is an obvious modification of Henry. The rejection of Claims 1, 8, 14 and 21 and their respective dependent claims, therefore, should be reversed.

**B. Ground For Rejection B (Claims 1-7) -- Henry does not teach or suggest the sequence of invoking the driver, installing the associated software, and then completing installation of the driver.**

Claim 1 recites invoking the device driver, installing the associated software in response to initializing the driver, and then completing installation of the driver. Applicants acknowledge that Henry teaches the complete installation of a driver without rebooting the client computer, as noted by the Examiner at page 4 of the final Office

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Action. There is no indication in Henry, however, as to when a utility related to a driver is installed – before, during or after the driver is installed. Consequently, Henry cannot be interpreted as suggesting anything about the sequence of steps recited in Claim 1. And, the Examiner has made no showing whatsoever to the contrary. Indeed, as noted above in footnote 1, the Examiner does not address Claim 1 anywhere in his remarks. The rejection of Claim 1 and its dependent claims should be reversed.

**C. Ground For Rejection C (Claims 8-12 and 14-21) -- Henry does not teach or suggest the sequence of reading a description file during installation of a device driver, installing the associated software in response to an installation procedure in the description file and then completing installation of the driver.**

Claim 8 recites reading a description file during installation of a device driver, installing the associated software in response to an installation procedure in the description file and then completing installation of the driver. Independent system Claim 14 and computer medium Claim 21 recite similar limitations.

Applicants acknowledge that Henry teaches the complete installation of a driver without rebooting the client computer, as noted by the Examiner at page 4 of the final Office Action. Henry, however, does not teach the sequence of steps recited in Claim 8. There is no indication in Henry as to when a utility related to a driver is installed -- before, during or after the driver is installed.

With regard to the specific limitations in Claim 8, there is nothing in Henry that even remotely suggests reading, during installation of the driver, a description file that includes installation instructions for a utility, installing the utility in response to those installation instructions and then completing installation of the driver. Henry's disclosure of a script file, standard operating system function calls, and values in a remote registry cited by the Examiner suggest nothing about the timing or trigger for installing any driver and utility that may be listed in the script file, other than the fact that they are both installed if they are both listed in the script file. Absent some teaching or suggestion to the contrary, it is only reasonable to assume that each such item of programming is installed independent of the installation of any other item. Certainly, there is nothing in Henry's description of a script file, standard operating system function calls, and values in a remote registry that suggests the installation of a

driver occurs first, triggers the installation of a utility, the driver installation is then interrupted while the utility is installed, and then completed only after the utility is installed.

For all of these reasons, Applicants respectfully submit that the Examiner has failed to show that Henry teaches or suggests the sequence of reading a description file during installation of a device driver, installing the associated software in response to an installation procedure in the description file and then completing installation of the driver. The rejection of Claims 8, 14 and 21 and their respective dependent claims, therefore, should be reversed.

**D. Ground For Rejection D (Claims 4 and 10) – Henry does not teach or suggest modifying the driver to read the description file.**

Dependent Claim 4 (depending from Claim 2) and Claim 10 (depending from Claim 9) add the step of modifying the driver to read the description file. The Examiner cites to Henry's script commands and suppression of user intervention during initialization as teaching this additional limitation. The Examiner fails to explain, however, how these features in Henry have any relevance at all to modifying the driver to read the description file during initialization. If fact, these features have no relevance to the limitation added in Claims 4 and 10. It is interesting to note that the Examiner has taken the position that Henry's script file is the claimed description file. Yet, the Examiner fails to show any teaching in Henry that a device driver reads the script file during initialization generally, and more specifically, that the device driver is modified to read the script file during initialization.

For this additional reason, Claims 4 and 10 distinguish patentably over Henry.

Respectfully submitted,

/Steven R. Ormiston/

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**APPENDIX OF CLAIMS INVOLVED IN THE APPEAL**

1. A method for installing a device driver and an associated peripheral software designed to accompany the device driver on a client computer over a network, said method comprising:

invoking said device driver for a peripheral administered by a remote computer over said network;

installing said associated peripheral software of said peripheral in response to an initialization of said device driver by an operating system of said client computer; and then;

completing installation of the device driver on the client computer.

2. The method for installing a device driver and an associated peripheral software according to claim 1, further comprising:

reading an associated description file of said peripheral in response to said initialization of said device driver, said associated description file including a name of said associated peripheral software and an installation procedure; and

installing said associated peripheral software according to said installation procedure on said client computer.

3. The method for installing a device driver and an associated peripheral software according to claim 1, wherein said initialization comprises an operating system call for said device driver to initialize itself.

4. The method for installing a device driver and an associated peripheral software according to claim 2, further comprising:

modifying said device driver to read said associated description file.

5. The method for installing a device driver and an associated peripheral software according to claim 1, wherein said peripheral is a printer.

6. The method for installing a device driver and an associated peripheral software according to claim 1, further comprising:

initiating installation of said peripheral by activating an icon representing said peripheral.

7. The method for installing a device driver and an associated peripheral software according to claim 1, further comprising:

initiating installation of said peripheral by selecting a UNC path name configured to represent said peripheral.

8. A method for installing a device driver and an associated peripheral software designed to accompany the device driver on a client computer over a network, comprising:

providing at least one peripheral installed on a remote computer, said device driver being for said at least one peripheral, and said associated peripheral software being for said at least one peripheral;

reading a description file associated with said at least one peripheral in response to an initialization of said device driver during an installation of said device driver on said client computer;

installing said peripheral software on said client computer in response to an installation procedure of said peripheral software included in said description file; and then;

completing installation of the device driver on the client computer.

9. The method for installing a device driver and an associated peripheral software according to claim 8, wherein said initialization comprises an operating system call for said device driver to initialize itself.

10. The method for installing a device driver and an associated peripheral software according to claim 9, further comprising:

modifying said device driver to read said description file.

11. The method for installing a device driver and an associated peripheral software according to claim 10, wherein said at least one peripheral is a printer.

12. The method for installing a device driver and an associated peripheral software according to claim 11, further comprising:

initiating installation of said at least one peripheral by activating an icon representing said at least one peripheral.

13.(canceled)

14. A system for remote installation of a device driver and an associated peripheral software designed to accompany the device driver, comprising:

at least one processor of a client computer;

a memory coupled to said at least one processor of said client computer;

at least one peripheral with said device driver and said associated peripheral software installed on a remote computer, wherein said device driver and said associated peripheral software is retrieved from said remote computer and stored in said memory, said device driver being configured to be executed by said at least one processor; and

said at least one processor is further configured to read a description file identifying an installation method for said associated peripheral software in response to an initialization of said device driver during an installation of said device driver on said client computer, install said associated peripheral software according to said installation method, and then complete installation of the device driver on the client computer.

15. The system for remote installation of a device driver and an associate peripheral software according to claim 14, wherein said initialization is configured to invoke an initialization entry point configured to point to said description file.

16. The system for remote installation of a device driver and an associate peripheral software according to claim 14, wherein said at least one processor is further

configured to install said associated peripheral software according to an installation procedure included in said description file.

17. The system for remote installation of a device driver and an associate peripheral software according to claim 16, wherein said initialization comprises an operating system call for said device driver to initialize itself.

18. The system for remote installation of a device driver and an associate peripheral software according to claim 17, wherein said peripheral is a printer.

19. The system for remote installation of a device driver and an associate peripheral software according to claim 18, wherein said at least one processor is further configured to install said device driver and said associated peripheral software in response to an activation of an icon of said at least one peripheral.

20. The system for remote installation of a device driver and an associate peripheral software according to claim 17, wherein said at least one processor is further configured to install said device driver and said associated peripheral software in response to a selection of a UNC path name representing said at least one peripheral.

21. A computer readable medium having programming thereon for installing a driver and other software for a peripheral administered by a host computer on a client computer remote from the host computer, the programming including:

- a driver for the peripheral;
- software for the peripheral designed to accompany the driver;
- an installation description file configured to identify the software and the installation method for the software to the driver; and
- the driver configured to read the installation description file and invoke the installation of the software according to the installation method.